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BEFORE THE FEDERAL MARITIME COMMISSION

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FEDERAL MARITIME COMM

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PETITION of

COSCO CONTAINER LINES

EUROPE GmbH

for an

EXEMPTION FROM SECTION 40703

OF THE SHIPPING ACT OF 1984,

AS AMENDED

P3-15

Pursuant to 46 CFR 502.76 and Section 40103 of the Shipping Act of 1984 (the "Act"), as amended, 46 U.S.C. §§ 40101 – 41309, COSCO Container Lines Europe GmbH ("COSCON Europe") petitions for an exemption from Section 40703 of the Act ("Controlled Carrier Act") to permit it to reduce its Tariff rates and charges upon publication. The exemption, if granted, would in no way affect the basic requirement of the Controlled Carrier Act, which ensures that all controlled carriers charge just and reasonable rates. Rather, it would only allow COSCON Europe to compete with other carriers in providing tariff rate reductions in a timely and competitive manner.

BACKGROUND

COSCON Europe is 100% owned by COSCO Container Lines Co., Ltd. ("COSCON"). As such, COSCON Europe would be considered a "controlled carrier" as defined under Section

40102(8) of the Act as it is an ocean common carrier whose operating assets are, directly or indirectly owned or controlled by a government.

Previously, under Petition No. P1-98, filed on January 7, 1998, China Ocean Shipping (Group) Company (now referred to as COSCON), requested a limited exemption from Section 9(c) of the Act (presently codified as Section 40703) so that it could reduce its tariff rates on less than 30 days notice. On March 27, 1998, the Federal Maritime Commission (the “Commission”) issued an order granting COSCON’s limited exemption from Section 9(c) of the Act and allowed COSCON to reduce its tariff rates to meet or exceed the filed rates of competing ocean common carriers on one days notice. Further, under Petition No. P3-99, filed on July 31, 2003, COSCON was granted an order by the Commission on April 1, 2004, for an exemption from the first sentence of Section 9(c) of the Act to permit it to reduce its tariff rates, charges, classifications, rules or regulations effective upon publication.¹

COSCON Europe has since been formed as a wholly owned company of COSCON based in Hamburg, Germany as part of an internal corporate restructuring that involved the transfer of COSCON’s container service for the Europe – U.S. trade. Beginning on or about June 1, 2015, COSCON Europe will begin operating the Europe – U.S. trade service from COSCON. As such COSCON Europe requests that the Federal Maritime Commission grant it an exemption from Section 40703 of the Act so that it may also reduce its tariff rates upon publication.

DISCUSSION

Under Section 40501(e) of the Act, all carriers, both controlled and non-controlled carriers, must give 30 days’ notice to increase their tariff rates. Section 40501(e) also states that

¹ Concurrently, on April 1, 2004, the Commission also granted exemptions from the first sentence of Section 9(c) of the Act to Petition No. P4-03 for China Shipping Container Lines, Ltd. and to Petition No. P6-03 to Sinotrans Container Lines Co., Ltd.

a “change in an existing rate that results in decreased cost to a shipper may become effective upon publication.”

However, Section’s 40701-40706 of the Act provides for additional restrictions applicable only to controlled carriers. More specifically, Section 40703, states that “notwithstanding section 40501(e) of this title and except for service contracts, a rate, charge, classification, rule, or regulation of a controlled carriers may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication.” This effectively requires that controlled carriers provide 30 days notice to increase or decrease their tariff rates. Non-controlled carriers, on the other hand, can reduce their tariff rates upon publication and without waiting 30 days.

COSCON Europe requests the Commission to exercise its power under Section 40103 of the Act which permits the Commission to grant an exemption from a requirement of the Act, if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce.

In requesting the exemption, COSCON Europe would like to set forth the arguments and reasoning presented in COSCON’s Petition No. P1-98 and P3-99 where it was demonstrated to the Commission that the exemption would not reduce competition or be detrimental to commerce. The Commission added that, “it appears that allowing COSCO(N) to compete more effectively for time-sensitive cargo will give shippers more service options and a more competitive carrier market. Furthermore, the exemption would shield shippers from real or perceived commercial uncertainty (i.e., as to when controlled carrier’s rate reductions will become effective).

The Commission also noted that in granting COSCON's petitions that it shall still hold the full authority to revoke the exemption. The Commission would still have this ability under Section 40103 of the Act. In addition, COSCON Europe would still be subject to the substantive standards of Section 40701 as its rate or charge cannot be "below a just and reasonable level".

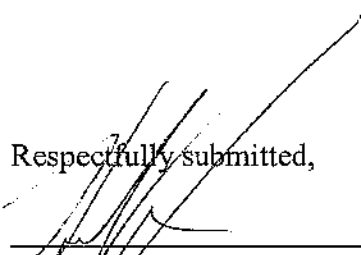
COSCON Europe has also included letters of support from North Atlantic Alliance Association, Inc. and Shipco Transport detailing their support for COSCON Europe's petition. These letters emphasize that the ocean freight market is extremely competitive and carriers need the capability to react to customer requests for rate adjustments in a timely manner. They add that if they (COSCON Europe) could not continue to function in the same capacity and rules under the new entity name, it will make it difficult for companies (shippers) to continue to work with them on freight issues that require a fast resolution.

Based on the above, COSCON Europe's Petition meets the two criteria for an exemption under Section 40103 of the Act. Rather than reduce competition, the exemption promotes it by allowing COSCON Europe to compete for cargo by reducing its tariff rates. Oftentimes, cargo is time sensitive, so the ability to reduce tariff rates in a timely fashion is a necessity for a carrier. In addition, the exemption would have the effect of promoting commerce, rather than being detrimental to commerce, as it provides shippers the opportunity to have a larger pool of carriers competing for their business.

CONCLUSION

For the reasons provided above, COSCON Europe respectfully submits that the requested exemption from Section 40703 will not result in a reduction in competition or be detrimental to commerce. This Petition should therefore be granted by the Federal Maritime Commission.

Respectfully submitted,



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for and on behalf of
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